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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10

11 In the Matter of

12 MAXINE SHERARD, SHERARD FOR
ASSEMBLY 2006, and SHERARD FOR
13 ASSEMBLY 2008,

14 Respondents.

FPPC No. 10/26

15
16 DEFAULT DECISION AND ORDER

(Gov. Code, §§ 11506 and 11520)

17 Complainant, the Fair Political Practices Commission, hereby submits this Default Decision and
18 Order for consideration at its next regularly scheduled meeting.

19 Pursuant to the California Administrative Procedure Act,¹ Respondents Maxine Sherard, Sherard
20 for Assembly 2006, and Sherard for Assembly 2008 have been served with all of the documents
21 necessary to conduct an administrative hearing regarding the above-captioned matter, including the
22 following:

- 23 1. An Order Finding Probable Cause;
- 24 2. An Accusation;
- 25 3. A Notice of Defense (Two Copies);

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27 _____
28 ¹ The California Administrative Procedure Act, which governs administrative adjudications, is
contained in Sections 11370 through 11529 of the Government Code.

1 IT IS SO ORDERED, effective upon execution below by the Chairman of the Fair Political
2 Practices Commission at Sacramento, California.

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5 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondents are Maxine Sherard (“Respondent Sherard”), a candidate for the California State Assembly (78th District), and her controlled committees, Sherard for Assembly 2006 and Sherard for Assembly 2008 (“Committees”). At all relevant times, Respondent Maxine Sherard was treasurer of Respondent Committees.

This matter arose out of referrals from both the San Diego County Registrar of Voters and the California Secretary of State alleging multiple violations of the Political Reform Act (the “Act”),¹ including allegations that Respondents failed to file campaign statements related to the June 6, 2006, November 7, 2006, and June 3, 2008, elections. The subsequent investigation by the Enforcement Division revealed that Respondents failed to file amended statements of organization, multiple campaign statements, terminating statements of organization, failed to properly report information about loans received and failed to refund a contribution as required by the Act.

For the purposes of this Default Decision and Order, Respondents’ violations of the Act are stated as follows:

Sherard for Assembly 2006

- COUNT 1:** Between approximately March 2006 and February 2008, Respondents Maxine Sherard and Sherard for Assembly 2006 failed to timely file at least one amended statement of organization regarding a change as to the treasurer of the committee, in violation of Section 84103, subdivision (a).
- COUNT 2:** Respondents Maxine Sherard and Sherard for Assembly 2006 failed to timely file semi-annual campaign statements for the reporting periods of January 1 through June 30, 2008, and July 1 through approximately November 7, 2008 (by which point the committee should have terminated), in violation of Section 84200, subdivision (a).
- COUNT 3:** Respondents Maxine Sherard and Sherard for Assembly 2006 failed to timely file a terminating statement of organization, in violation of Section 84214, Regulations 18404 and 18404.1.

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Sherard for Assembly 2008

- COUNT 4:** Between approximately March 2008 and June 2008, Respondents Maxine Sherard and Sherard for Assembly 2008 failed to timely file at least one amended statement of organization regarding a change as to the treasurer of the committee, in violation of Section 84103, subdivision (a).
- COUNT 5:** Respondents Maxine Sherard and Sherard for Assembly 2008 failed to report all required information regarding loans to the committee on campaign statements filed for the reporting periods of March 18 through May 17, 2008, and May 18 through June 30, 2008, in violation of Section 84211, subdivision (g).
- COUNT 6:** Respondents Maxine Sherard and Sherard for Assembly 2008 failed to timely file semi-annual campaign statements for the reporting periods of July 1 through December 31, 2008, January 1 through June 30, 2009, July 1 through December 31, 2009, and January 1 through June 3, 2010 (by which time the committee should have terminated), in violation of Section 84200, subdivision (a).
- COUNT 7:** Respondents Maxine Sherard and Sherard for Assembly 2008 failed to timely file a terminating statement of organization, in violation of Section 84214, Regulations 18404 and 18404.1.
- COUNT 8:** Following Respondent Maxine Sherard's defeat in the primary election that was held on or about June 3, 2008, Respondents Sherard and Sherard for Assembly 2008 failed to refund approximately \$1,400 of a \$5,000 contribution (that had been made to the committee in the form of a loan), in violation of Section 85318.

**DEFAULT PROCEEDINGS UNDER
THE ADMINISTRATIVE PROCEDURE ACT**

When the Fair Political Practices Commission (the "Commission" or "FPPC") determines that there is probable cause for believing that the Act has been violated, it may hold a hearing to determine if a violation has occurred. (Section 83116.) Notice of the hearing, and the hearing itself, must be conducted in accordance with the Administrative Procedure Act (the "APA").² (*Ibid.*) A hearing to determine whether the Act has been violated is initiated by the filing of an accusation, which shall be a concise written statement of the charges specifying the statutes and rules which the respondent is alleged to have violated. (Section 11503.)

² The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections 11370 through 11529 of the Government Code.

Included among the rights afforded a respondent under the APA is the right to file a Notice of Defense with the Commission within 15 days after service of the accusation, by which the respondent may (1) request a hearing, (2) object to the accusation's form or substance or to the adverse effects of complying with the accusation, (3) admit the accusation in whole or in part, or (4) present new matter by way of a defense. (Section 11506, subd. (a)(1)-(6).)

The APA provides that a respondent's failure to file a Notice of Defense within 15 days after service of an accusation constitutes a waiver of the respondent's right to a hearing. (Section 11506, subd. (c).) Moreover, when a respondent fails to file a Notice of Defense, the Commission may take action based on the respondent's express admissions or upon other evidence, and affidavits may be used as evidence without any notice to the respondent. (Section 11520, subd. (a).)

RESPONDENTS' HISTORY OF NON-COOPERATION

Information regarding Respondents' history of non-cooperation in this case may be found in paragraphs 1 through 19 of the Declaration of Neal Bucknell in Support of Default Decision and Order ("Bucknell Declaration"), which is submitted herewith as Exhibit C and incorporated herein by reference as if in full. A general summary of the declaration follows.

This case arose as a result of a non-filer enforcement referral from the San Diego County Registrar of Voters and the California Secretary of State.

Gary Winuk, Chief of the Enforcement Division for the Fair Political Practices Commission, contacted Respondents by way of a letter dated March 29, 2010. In the letter, Mr. Winuk outlined various violations of the Act, which are the subject of the Accusation in this case, and he asked for corrective action to be taken on or before April 22, 2010.

The corrective action called for the filing of several delinquent statements, amendment of certain filed campaign statements regarding loan activity, and the refund of an over-the-limit contribution in connection with what is now Count 8.

During the week of July 5, 2010, Neal Bucknell, Senior Commission Counsel with the Enforcement Division, spoke with Respondent Sherard on the telephone because it appeared that no corrective action had been taken. Respondent Sherard advised that she was having serious health problems. She confirmed that she had received Mr. Winuk's letter of March 29, 2010, and she stated that she would forward the letter to Ethel Davis, a Certified Public Accountant, to take the appropriate corrective action.

Later that week, Mr. Bucknell spoke with Ms. Davis on the telephone. She stated that the corrective action would be taken by approximately July 23, 2010. Subsequently, an extension was granted until July 30, 2010.

On August 3, 2010, Mr. Bucknell sent an email to Ms. Davis because he had not heard back from her or Respondent Sherard. In the email, Mr. Bucknell indicated that he needed to

move forward with prosecution since the case could not be settled without cooperation on the part of Ms. Davis/Sherard (in the form of taking the corrective action described above).

On or about September 27, 2010, Mr. Bucknell telephoned Respondent Sherard because he had not heard back from Ms. Davis in response to his email of August 3, 2010. Respondent Sherard seemed shocked to hear that Ms. Davis had not taken the requested corrective action. Also, she seemed shocked to hear that Ms. Davis no longer was responding to Mr. Bucknell's attempts at communication. She indicated that she would look into the matter and get back to Mr. Bucknell.

Unfortunately, no real cooperation ever was forthcoming from Respondent Sherard or her agent/accountant, Ms. Davis. Accordingly, on October 14, 2010, Mr. Bucknell caused the Report in Support of a Finding of Probable Cause (with related documents) to be served on Respondent Sherard via certified mail, return receipt requested (which was signed with a date of October 16, 2010).

On November 4, 2010, Mr. Bucknell received a voice message from Respondent Sherard. She said that she had been sick and that she needed an extension of time to respond to the probable cause report. Also, she said Mr. Bucknell could call back someone named John Watts, and she left the contact information for Mr. Watts. It was not made clear whether Mr. Watts was an attorney. Mr. Bucknell called Mr. Watts and had to leave a message because no one answered the telephone. Also, Mr. Bucknell called and left voicemail for Respondent Sherard to the effect that if she wanted more time to respond to the probable cause report, she would have to take the matter up with the Executive Director. Additionally, Mr. Bucknell asked Respondent for a return telephone call, and Mr. Bucknell pointed out that he returned her last call from a few weeks ago, but she had never called back in response to the message that was left for her.

Later that day, Mr. Bucknell received a call back from Mr. Watts. Mr. Watts stated that he was an accountant—not an attorney—but that an attorney would be representing Respondent Sherard very soon. (This turned out not to be true. No attorney has ever appeared in this case on behalf of Respondents.) Mr. Bucknell told Mr. Watts words to the effect that if Respondent Sherard wanted more time to respond to the probable cause report, she would have to take the matter up with the Executive Director, and Mr. Bucknell was left with the impression that Respondent Sherard or her attorney would be making such a request within a matter of days. Also, Mr. Watts expressed interest in attempting to take corrective action on behalf of Respondent Sherard to address the issues raised by the probable cause report. Mr. Bucknell stated words to the effect that if Respondent Sherard were to take such corrective action, it would be possible to settle, but not for as low of a penalty as was offered at the beginning of the case. However, settlement was not made a pre-condition of filing.

However, Respondent Sherard never retained an attorney, and approximately two-and-a-half weeks later, on November 22, 2010, she emailed the Executive Director, Roman Porter, and asked for an extension of time to respond to the probable cause report. The Enforcement Division objected to the request based upon factors including, but not limited to, Respondent Sherard's history of delay and the fact that she was provided with more than the usual amount of time to respond to the probable cause report (having received approximately 39 days to respond,

as opposed to the usual 21 days). Mr. Porter denied Respondent Sherard's request for an extension of time, and Respondents never requested a probable cause conference nor opposed the probable cause report.

PROCEDURAL REQUIREMENTS AND HISTORY

Documents supporting the procedural history in this case are included as part of the attached Certification of Records ("Certification"), which is submitted herewith as Exhibit A and incorporated herein by reference as if in full. Hereafter, the attachments to Exhibit A are referred to as Exhibits A-1 through A-6.

Additional supporting information regarding the procedural history of this case may be found in paragraphs 10 through 18 of Exhibit C, the Bucknell Declaration.

A. Initiation of the Administrative Action

An administrative action is commenced by service of the probable cause hearing notice, and service must be within five years of the violations at issue—which is the applicable statute of limitations. (See Sections 83115.5 and 91000.5.)

Section 83115.5 prohibits a finding of probable cause by the Commission unless the person alleged to have violated the Act is: (1) notified of the violation by service of process or registered mail with return receipt requested; (2) provided with a summary of the evidence; and (3) informed of his or her right to be present in person and represented by counsel at any proceeding of the Commission held for the purpose of considering whether probable cause exists for believing the person violated the Act. Additionally, Section 83115.5 states that the required notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office.

In accordance with Sections 83115.5 and 91000.5, the Enforcement Division initiated the administrative action against Respondents in this case by serving them with a Report in Support of a Finding of Probable Cause (the "PC Report") by certified mail, return receipt requested,³ on October 14, 2010. The original return receipt addressed to Respondents was signed on October 16, 2010. Therefore, the administrative action commenced on October 16, 2010, and the five year statute of limitations was effectively tolled on that date. (See Ex. A-1; and Ex. C, Bucknell Declaration, ¶ 10.)

As required by Section 83115.5, the packet served on Respondents contained a cover letter and a memorandum describing probable cause proceedings, which advised that Respondents had 21 days in which to request a probable cause conference and/or to file a written response to the PC Report.

³ Where any communication is required by law to be mailed by registered mail to or by the state, or any officer or agency thereof, the mailing of such communication by certified mail is sufficient compliance with the requirements of the law. (Section 8311.)

On November 22, 2010, Respondent Sherard emailed the Executive Director of the FPPC, Roman Porter, and asked for an extension of time to respond to the PC Report. The Enforcement Division objected to the request based upon factors including, but not limited to, Respondent Sherard's history of delay (see summary above) and the fact that Respondents were provided with more than the usual amount of time to respond to the PC Report. Mr. Porter denied Respondent Sherard's request for an extension of time, and Respondents never requested a probable cause conference nor opposed the PC Report. (See Ex. C, Bucknell Declaration, ¶¶ 1-13.)

B. Ex Parte Request for a Finding of Probable Cause

Since Respondents failed to request a probable cause conference or submit a written response to the PC Report by the statutory deadline, the Enforcement Division submitted an Ex Parte Request for a Finding of Probable Cause and an Order that an Accusation be Prepared and Served to Executive Director Roman Porter on November 24, 2010. A copy of this document was mailed to Respondents as well. (Ex. A-2.)

On December 2, 2010, Mr. Porter's Finding of Probable Cause and Order to Prepare and Serve an Accusation was served via mail on Respondents. (Ex. A-3; and Ex. C, Bucknell Declaration, ¶ 14.)

C. The Issuance and Service of the Accusation

Under the Act, if the Executive Director makes a finding of probable cause, he or she shall prepare an accusation pursuant to Section 11503 of the APA, and have it served on the persons who are the subject of the probable cause finding. (Regulation 18361.4, subd. (e).)

Section 11503 states:

A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

Section 11505, subdivision (a), requires that, upon the filing of the accusation, the agency shall: (1) serve a copy thereof on the respondent as provided in Section 11505, subdivision (c); (2) include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506; (3) include a statement that respondent

may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon the respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing; and (4) include copies of Sections 11507.5, 11507.6, and 11507.7.

Section 11505, subdivision (b), sets forth the language required in the accompanying statement to the respondent.

Section 11505, subdivision (c), provides that the Accusation and accompanying information may be sent to the respondent by any means selected by the agency, but that no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent has been served personally or by registered mail as set forth in Section 11505.

In this regard, the Accusation, Statement to Respondent, two copies of a form of Notice of Defense, a copy of Government Code sections 11506 through 11508, and a cover letter dated December 29, 2010 were personally served on Respondent Maxine Sherard on January 4, 2011. (Ex. A-4; and Ex. C, Bucknell Declaration, ¶ 15.)

The Statement to Respondent notified Respondents that they could request a hearing on the merits and warned that, unless a Notice of Defense was filed within 15 days of service of the Accusation, Respondents would be deemed to have waived the right to a hearing.

On or about January 18, 2011, the Enforcement Division received a letter from Respondent Sherard about her medical condition. She indicated that she hoped to be released to take on day-to-day tasks on March 7, 2011. Accordingly, on or about January 20, 2011, the Enforcement Division sent a letter to Respondent Sherard advising her that in light of her medical issues, she could have until March 7, 2011 to file a Notice of Defense. Additionally, the letter stated: "Also, please note that we remain willing to discuss settlement of this case at any time." (See Ex. A-5; and Ex. C, Bucknell Declaration, ¶¶ 16-17.)

However, Respondents never filed a notice of defense in this case. (Ex. C, Bucknell Declaration, ¶ 18.)

As a result, on September 28, 2011, the Enforcement Division sent a letter to Respondents advising that this matter would be submitted for a Default Decision and Order at the Commission's next public meeting. A copy of the proposed Default Decision and Order, with exhibits, was included. (See Ex. A-6.)

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that the contributions and expenditures affecting election campaigns are fully and truthfully disclosed to the public, so that voters may be better informed, and improper practices may be inhibited. The Act therefore establishes a comprehensive campaign reporting system.

The following summary reflects the Act as it was in effect at the time of the relevant violations.

Duty to File Campaign Statements and Reports

The Act requires candidates, their controlled committees, and the treasurers of those committees, to file campaign statements at specific times disclosing information regarding contributions received and expenditures made by the campaign committee. The Act includes within the definition of “committee” any person or combination of persons who receives contributions of \$1,000 or more during a calendar year. This type of committee is commonly referred to as a “recipient committee.” (Section 82013, subd. (a).) A controlled committee is a committee that is controlled directly or indirectly by a candidate. A candidate controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee. (Section 82016, subd. (a).) A “candidate” is defined, in relevant part, as an individual who is listed on the ballot for election to any elective office. (Section 82007.)

Under the Act’s campaign reporting system, recipient committees are required to file certain specified campaign statements and reports. Members of the Legislature, candidates for such office, their controlled committees, and committees formed primarily to support or oppose such candidates at least must file campaign statements with the California Secretary of State and the elections official for their county of domicile. (See Section 84215.)

Duty to Amend the Statement of Organization

Whenever there is a change as to any of the information contained in a statement of organization (Form 410), an amended statement of organization reflecting the change must be filed with all filing officers within 10 days. (Section 84103, subd. (a).) The information required on a statement of organization includes the: “full name, street address, and telephone number, if any, of the treasurer and other principal officers.” (Section 84102, subd. (c).)

Duty to File Semi-Annual Campaign Statements

Section 84200, subdivision (a), requires all candidates and recipient committees to file semi-annual campaign statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31.⁴ All filing obligations continue until the recipient committee is terminated by filing a terminating statement of organization (Form 410) with the Secretary of State and a copy with the local filing officer receiving the committee’s original campaign statements. (Section 84214; Reg. 18404.)

⁴ Under Regulation 18116, whenever the Act requires that a statement or report (other than late contribution reports required by Section 84203, late independent expenditure reports required by Section 84204, or notice by the contributor of a late in-kind contribution required by Section 84203.3) be filed prior to or not later than a specified date or during or within a specified period, and the deadline falls on a Saturday, Sunday or official state holiday, the filing deadline for such a statement or report shall be extended to the next regular business day.

Duty to File a Terminating Statement of Organization

The Act requires that candidates and committees terminate their filing requirements in accordance with regulations adopted by the Commission. (Section 84214.) This statement must be filed with all filing officers. (Reg. 18404, subd. (c).) Regulation 18404, subdivision (b)(1)-(4), provides that a controlled or recipient committee's filing obligations may be terminated when the committee:

- 1) Has ceased to receive contributions and make expenditures and does not anticipate receiving contributions or making expenditures in the future;
- 2) Has eliminated or has declared that it has no intention or ability to discharge all of its debts, loans received and other obligations;
- 3) Has no surplus funds; and
- 4) Has filed all required campaign statements disclosing all reportable transactions.

Regulation 18404.1 lays out the timetable for the termination of committees. Candidate controlled committees with no "net debts outstanding" must be terminated no later than nine months after the earliest of the date the candidate is defeated, leaves office, or the term of office for which the committee was formed ends. (Reg. 18404.1, subd. (b)(1).) Candidate controlled committees with "net debts outstanding" must be terminated no later than 24 months after the earliest of the date the candidate is defeated, leaves office, or the term of office for which the committee was formed ends. (Reg. 18404.1, subd. (b)(2).)

"Net debts outstanding" is defined, for the purposes of committee termination, in Regulation 18531, subdivision (d), as the:

...total amount of unpaid debts, loans and accrued expenditures incurred with respect to the election, less the sum of both of the following:

- (i) The total cash on hand available to pay those debts and obligations, including: currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value.
- (ii) The total amounts owed to the candidate controlled committee in the form of credits, refunds of deposits, returns, or receivables, or a commercially reasonable amount based on the collectability of those credits, refunds, returns or receivables.

Duty to Report Information Regarding Loans Received

The Act requires campaign statements to contain detailed information regarding loans received or made by a committee. Section 84211, subdivision (g), requires that if the cumulative

amount of loans received from or made to a person during a reporting period is \$100.00 or more, and a loan has been received from or made to a person during the period covered by a campaign statement, or is outstanding during the period covered by the campaign statement, the following must be disclosed:

- 1) The person's full name, street address, and occupation;
- 2) The name of the person's employer, or if self-employed, the name of the business;
- 3) The original date and amount of each loan;
- 4) The due date and interest rate of each loan;
- 5) The cumulative payment made or received to date at the end of the reporting period; and
- 6) The balance outstanding at the end of the reporting period.

The above information must be reported for each loan made, received, or outstanding during the campaign reporting period.

**Duty to Refund Contributions Received for
General Election Following Defeat in Primary Election**

A candidate for elective state office may raise contributions for a general election prior to the primary election if the candidate sets aside such contributions and uses these contributions for the general election. If the candidate is defeated in the primary election, the general election funds shall be refunded to the contributors on a pro rata basis less certain allowable expenses associated with the raising and administration of the contributions. (Section 85318.)

SUMMARY OF THE FACTS

Respondent Sherard successfully ran for the Democratic nomination to be a Member of the State Assembly, 78th District, in the June 6, 2006 primary election. Respondent Sherard for Assembly 2006 was Respondent Sherard's controlled committee for her candidacy. Thereafter, Respondent Sherard lost in the general election held on November 7, 2006. In a semi-annual campaign statement filed for the period ending December 31, 2006, the committee reported year-to-date contributions received in excess of 1.3 million dollars for 2006, and comparable year-to-date expenditures for 2006. (See Declaration of Paul Rasey in Support of Default Decision and Order ("Rasey Declaration"), submitted herewith as Ex. B and incorporated herein by reference as if in full. In particular, see ¶¶ 3, 4, and 10.)

Subsequently, Respondent Sherard unsuccessfully ran for the Democratic nomination to be a Member of the State Assembly, 78th District, in the June 3, 2008, primary election. Respondent Sherard for Assembly 2008 was her controlled committee for her candidacy. In a semi-annual campaign statement filed for the period ending June 30, 2008, the committee reported year-to-date contributions received in excess of \$19,500 for 2008, and year-to-date expenditures in excess of \$18,300 for 2008. (See Ex. B, Rasey Declaration, ¶¶ 3, 5, and 14.)

Both committees described above were domiciled in San Diego County. (Ex. B, Rasey Declaration, ¶¶ 4 and 5.) Accordingly, Respondents at least were required to file the statements described below with the California Secretary of State and the elections official for San Diego County.

SHERARD FOR ASSEMBLY 2006

Count 1: Failure to Amend Statement of Organization

In approximately March 2006, Respondents Sherard and Sherard for Assembly 2006 filed a statement of organization. The statement identified someone other than Respondent Sherard as the committee treasurer. From approximately March 2006 through February 2008, different people signed off on filings as the committee treasurer. One of these people was Respondent Sherard, who started signing campaign statements as the treasurer in approximately January 2008. However, Respondents failed to file any amendments to the statement of organization regarding these changes as to the committee treasurer. (Ex. B, Rasey Declaration, ¶ 8.)

By failing to amend the statement of organization to reflect the change as to the committee treasurer, Respondents Sherard and Sherard for Assembly 2006 committed one violation of Section 84103, subdivision (a).

Count 2: Failure to File Semi-Annual Campaign Statements

Respondents Sherard and Sherard for Assembly 2006 were required to file a semi-annual campaign statement by the July 31, 2008 due date for the reporting period of January 1 through June 30, 2008. However, the statement never was filed. (See Ex. B, Rasey Declaration, ¶ 9.)

Also, since Respondent Sherard lost in the general election that was held on November 7, 2006, and since her committee had outstanding debts, Respondents Sherard and Sherard for Assembly 2006 were required to file a terminating statement of organization no later than November 7, 2008, and at that same time, they were required to file a semi-annual campaign statement for the reporting period of July 1 through November 7, 2008. (See Section 84214, Regulations 18404 and 18404.1.) However, the required semi-annual campaign statement never was filed. (See Ex. B, Rasey Declaration, ¶¶ 9 and 10.)

By failing to file the above-described semi-annual campaign statements, Respondents Sherard and Sherard for Assembly 2006 violated Section 84200, subdivision (a).

Count 3: Failure to File Terminating Statement of Organization

Since Respondent Sherard lost in the general election that was held on November 7, 2006, and since her committee had outstanding debts, Respondents Sherard and Sherard for Assembly 2006 were required to file a terminating statement of organization no later than November 7, 2008. (See Section 84214, Regulations 18404 and 18404.1.) However, the required terminating statement of organization never was filed. (See Ex. B, Rasey Declaration, ¶¶ 9 and 10.)

By failing to file a terminating Statement of organization, Respondents Sherard and Sherard for Assembly 2006 committed one violation of Section 84214, Regulations 18404 and 18404.1.

SHERARD FOR ASSEMBLY 2008

Count 4: Failure to Amend Statement of Organization

Respondents had a duty to amend the statement of organization (Form 410) within 10 days of a change as to any of the information required to be reported on the statement, including a change as to the identity of the committee's treasurer.

In approximately March 2008, Respondents Sherard and Sherard for Assembly 2008 filed a statement of organization. The statement identified someone other than respondent Sherard as the committee treasurer. In approximately May 2008, Respondent Sherard began signing campaign statements as the treasurer. However, Respondents failed to file any amendments to the statement of organization regarding this change as to the committee treasurer. (See Ex. B, Rasey Declaration, ¶ 11.)

By failing to amend the statement of organization to reflect the change as to the committee's treasurer, Respondents Sherard and Sherard for Assembly 2008 committed one violation of Section 84103, subdivision (a).

Count 5: Failure to Report Loan Information

Respondents had a duty to accurately report all required information regarding loans received, made and outstanding on their campaign statements.

Regarding Counts 6 and 7, the pre-election campaign statement filed by Respondents Sherard and Sherard for Assembly 2008 for the reporting period of January 1 through March 17, 2008 reflected that a \$10,000 loan from Respondent Sherard to Respondent Sherard for Assembly 2008 was outstanding at the end of the reporting period. However, the next filed campaign statement for the reporting period of March 18 through May 17, 2008, omitted the outstanding loan. Also, this same campaign statement referenced a \$5,000 loan from Carrol Waymon and a \$1,500 loan from Renee Butler, but the lenders' occupations, employers/businesses, and the interest rates of the loans were omitted. Additionally, the semi-annual campaign statement for the next reporting period of May 18 through June 30, 2008, omitted the outstanding loans from Carrol Waymon and Renee Butler. Also, this campaign statement referenced a loan or loans from Respondent Maxine Sherard and a \$1,000 loan from Staa Heshimu, but the original dates of the loans and the interest rates of the loans were omitted. (See Ex. B, Rasey Declaration, ¶ 12.)

By failing to report all required information regarding loans received as described above, Respondents Sherard and Sherard for Assembly 2008 violated Section 84211, subdivision (g).

Count 6: Failure to File Semi-Annual Campaign Statements

Respondents Sherard and Sherard for Assembly 2008 had a duty to file a semi-annual campaign statement by the January 31, 2009 due date for the reporting period of July 1 through December 31, 2008. However, the required semi-annual campaign statement never was filed. (See Ex. B, Rasey Declaration, ¶ 13.)

Also, Respondents Sherard and Sherard for Assembly 2008 had a duty to file a semi-annual campaign statement by the July 31, 2009 due date for the reporting period of January 1 through June 30, 2009. However, the required semi-annual campaign statement never was filed. (*Id.*)

Additionally, Respondents Sherard and Sherard for Assembly 2008 had a duty to file a semi-annual campaign statement by the January 31, 2010 due date for the reporting period of July 1 through December 31, 2009. However, the required semi-annual campaign statement never was filed. (*Id.*)

Also, since Respondent Sherard lost in the Democratic primary election that was held on June 3, 2008, and since her committee had outstanding debts, Respondents Sherard and Sherard for Assembly 2008 were required to file a terminating statement of organization no later than June 3, 2010, and at that same time, they were required to file a semi-annual campaign statement for the reporting period of January 1 through June 3, 2010. (See Section 84214, Regulations 18404 and 18404.1.) However, the required semi-annual campaign statement never was filed. (See Ex. B, Rasey Declaration, ¶¶ 13 and 14.)

By failing to file the above-described semi-annual campaign statements, Respondents Sherard and Sherard for Assembly 2008 violated Section 84200, subdivision (a).

Count 7: Failure to File Terminating Statement of Organization

Since Respondent Sherard lost in the Democratic primary election that was held on June 3, 2008, and since her committee had outstanding debts, Respondents Sherard and Sherard for Assembly 2008 were required to file a terminating statement of organization no later than June 3, 2010. (See Section 84214, Regulations 18404 and 18404.1.) However, the required terminating statement of organization never was filed. (See Ex. B, Rasey Declaration, ¶ 14.)

By failing to file a terminating Statement of organization as described above, Respondents Sherard and Sherard for Assembly 2008 committed one violation of Section 84214, Regulations 18404 and 18404.1.

Count 8: Failure to Refund Contribution in Excess of the Limit

In connection with the 2008 candidacy of Respondent Sherard for California State Assembly, 78th District, the contribution limit was \$3,600 per contributor per election. (See Sections 83124, 85301, subd. (a), and the version of Regulation 18545, subd. (a)(1), that was in effect for the 2008 primary and general elections.)

A loan received by a candidate or committee is a contribution unless the loan is received from a commercial lending institution in the ordinary course of business, or it is clear from the surrounding circumstances that it is not made for political purposes. (Section 84216.)

During or prior to the reporting period ending May 17, 2008, Respondents Sherard and Sherard for Assembly 2008 received a \$5,000 contribution in the form of a loan from Carrol Waymon. Carrol Waymon was not listed as a commercial lending institution on the campaign statement. (See Ex. B, Rasey Declaration, ¶ 15.)

When Respondent Sherard lost in the 2008 primary election, she was required by Section 85318 to refund/repay approximately \$1,400 of the loan in question because of the contribution limit of \$3,600 per election. (Since she would not be proceeding to the general election, she only could accept \$3,600 of the \$5,000 loan/contribution.) However, Mr. Waymon has confirmed that the loan was not repaid. (*Id.*)

By failing to refund/repay the over-the-limit amount of the loan as described above, Respondents Sherard and Sherard for Assembly 2008 committed one violation of Section 85318.

CONCLUSION

This matter consists of eight counts of violating the Act, which carry a maximum administrative penalty of \$5,000 per count, for a total maximum administrative penalty of \$40,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

The failure to file amended statements of organization regarding changes as to the principal officers of a committee makes it more difficult to ascertain which officers are responsible for violations of the Act in the event that enforcement proceedings become necessary. Also, the failure to file campaign statements and properly report loans is a serious violation of the Act because it deprives the public of important information about a candidate's contributors and financial activities. Additionally, the failure to refund/repay general election contributions after losing in the primary election is a violation of applicable contribution limits.

Regarding Counts 1 and 4, a fairly recent case involving a comparable violation of Section 84103, subdivision (a), resulted in a penalty in the mid-range. (See *In the Matter of Mary Ann Andreas, Andreas for Assembly, Marta Baca, and Phyllis Nelson*, FPPC No. 06/77, approved Jun. 10, 2010 [\$2,250 penalty imposed for State Assembly candidate, committee and

treasurers who failed to file amended statements of organization regarding changes as to the identities of the treasurer and assistant treasurer].)

Regarding Counts 2 and 6, a recent stipulation involving violations of Section 84200, subdivision (a), also imposed a penalty in the mid-range. (See *In the Matter of Sergio Casanova and Alhambra Firefighter's PAC*, FPPC No. 10/521 (Default Decision), approved Sep. 22, 2011 [\$2,500 per count imposed for three counts of failure to file semi-annual campaign statements by state general purpose committee and its treasurer].)

Regarding Counts 3 and 7, a comparable violation of Section 84214 also resulted in a penalty in the mid-range. (See *In the Matter of Mike Briggs, Briggs for Assembly, and Sharron Nisbett*, FPPC No. 05/771 (Default Decision), approved Dec. 10, 2009 [\$2,000 penalty imposed for State Assembly candidate, committee and treasurer who failed to file terminating statement of organization].)

Regarding Count 5, a recent stipulation involving a violation of Section 84211, subdivision (g), also imposed a penalty in the mid-range. (See *In the Matter of Arlie Ricasa, Arlie Ricasa 2008, and Kinde Durkee*, FPPC No. 10/808, approved Apr. 11, 2011 [\$2,000 penalty imposed for State Assembly candidate, committee and treasurer who failed to report a loan].)

Regarding Count 8, a recent stipulation involving violation of Section 85318 also resulted in a penalty in the mid-range. (See *In the Matter of Jerome Horton, Democrat Jerome Horton for Board of Equalization, Citizens to Elect Honest Officials, and Kinde Durkee*, FPPC No. 08/286, approved Apr. 11, 2011 [\$2,500 penalty imposed for Board of Equalization candidate, committee and treasurer who failed to refund/repay general election contributions after losing the primary election].)

In this case, Respondents were provided with numerous opportunities to cooperate with the Enforcement Division and take corrective action as to the violations set forth above. Unfortunately, they never availed themselves of these opportunities. They consciously chose *not* to file when asked to do so by the Enforcement Division. (See Ex. C, Bucknell Declaration, ¶¶ 3-18.)

Also, in 2004, the Enforcement Division opened a case involving potential violations of Sections 84203 (failure to file late contribution reports), 84104 (failure to maintain required records), and 84200 (failure to file a semi-annual campaign statement) on the part of Respondent Sherard. In 2005, Respondent Sherard received a warning letter from the Enforcement Division in connection with this other case. Accordingly, she should have been aware of the importance of complying with the filing requirements of the Act. (See Ex. C, Bucknell Declaration, ¶ 19.)

Additionally, Respondents' numerous violations span multiple years and show an ongoing pattern of disregard for the Act.

Under these circumstances, it is respectfully submitted that imposition of a penalty in the amount of \$2,500 per count is justified, for a total penalty in the amount of \$20,000, of which

Respondent Sherard is jointly and severally liable for the full amount, Respondent Sherard for Assembly 2006 is jointly and severally liable for \$7,500, and Respondent Sherard for Assembly 2008 is jointly and severally liable for \$12,500. A lower penalty is not being sought because many of the violations have been collapsed into single counts. (See Counts 2, 5, and 6.)